

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DEVOCEAN JEWELRY LLC,

Plaintiff,

v.

NBCUNIVERSAL MEDIA, LLC

Defendant.

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Civil Action No. 1:16-cv-01939

ANSWER

Defendant NBCUniversal Media, LLC (“NBCUniversal”), as and for its Answer to the Complaint herein, states as follows:

Nature of the Action

1. The allegations in paragraph 1 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal denies those allegations. Specifically, NBCUniversal denies that it committed any unlawful act with regard to the copyrights that plaintiff alleges that he owns, and further denies that NBCUniversal infringed any such alleged copyrights.

Jurisdiction and Venue

2. The allegations in paragraph 2 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal admits that the Complaint purports to assert a civil action for copyright infringement.

3. The allegations in paragraph 3 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual allegations, NBCUniversal admits that it does business in New York.

4. The allegations in paragraph 4 of the Complaint state legal conclusions to which no responsive pleading is required.

Parties

5. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. NBCUniversal admits the allegations in paragraph 6 of the Complaint, except that it denies that it is a corporation organized and existing under the laws of the State of Delaware. NBCUniversal states that it is a limited liability company organized under the laws of the State of Delaware.

Facts

7. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.

8. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint. NBCUniversal further states upon information and belief that plaintiff posted on YouTube two videos involving a dog trained to dive for lobster. *See*

<https://www.youtube.com/watch?v=mcBB0VjuVDM> and

<https://www.youtube.com/watch?v=0nBldzJWNjM>.

9. The allegations in paragraph 9 of the Complaint state legal conclusions to which no responsive pleading is required. To the extent they consist of factual

allegations, NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the complaint.

10. NBCUniversal denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint. NBCUniversal states that Exhibit A to the Complaint purports to be a copy of a copyright Certificate of Registration indicating an effective date of February 8, 2016, and refers to Exhibit A to the Complaint for the content therein.

11. NBCUniversal denies the allegations in paragraph 11 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required. NBCUniversal further states that a segment of the TODAY Show that aired on November 27, 2015 included an excerpt of a video of a dog diving off a boat and catching a lobster, overlaid with audio commentary by TODAY Show hosts. Concurrently with the filing of this Answer, NBCUniversal is submitting to the Court, as Exhibit 1, a DVD containing a copy of the TODAY Show segment as it was broadcast.

12. NBCUniversal denies the allegations in paragraph 12 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required. NBCUniversal further states that on or around November 27, 2015, NBCUniversal posted to the www.NBCNews.com website a TODAY Show segment that included an excerpt of a video of a dog diving off a boat and catching a lobster, overlaid with audio commentary by TODAY Show hosts. Concurrently with the filing of this Answer, NBCUniversal is submitting to the Court, as Exhibit 2, a DVD containing a copy of the TODAY Show segment as it was posted to www.NBCNews.com.

13. NBCUniversal denies the allegations in paragraph 13 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

NBCUniversal further states that to the extent it used any excerpt of the Video alleged in the Complaint, such use was for the purpose of commenting on a video that was being disseminated and commented upon widely on social media and by other news outlets. Printouts of examples of the dissemination of, and commentary about, the video on social media and other news outlets before November 27, 2015 are attached as Exhibit 3. In addition, NBCUniversal states that plaintiff expressed approval, publicly and in writing, of NBCUniversal's use of the video excerpt. For example, plaintiff's co-founder, Alex Schulze, posted on Instagram: "I cannot believe the amount of success that has come from this video. Within one day it was featured on The Today Show, Good Morning America, and countless other news stations and social media platforms all around the world. I just wanted to say thank you to everyone for all the help sharing, liking and commenting on the video to help it go viral, you guys are awesome." Mr. Schulze even included the TODAY logo in his Instagram post. A printout of Mr. Schulze's Instagram post is attached as Exhibit 4.

14. For its answer to paragraph 14 of the Complaint, NBCUniversal incorporates each and every answer herein to paragraphs 1-13 of the Complaint.

15. NBCUniversal denies the allegations in paragraph 15 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

16. NBCUniversal denies the allegations in paragraph 16 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

17. NBCUniversal denies the allegations in paragraph 17 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

18. NBCUniversal denies the allegations in paragraph 18 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

19. NBCUniversal denies the allegations in paragraph 19 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

20. NBCUniversal denies the allegations in paragraph 20 of the Complaint, except to the extent they contain legal conclusions to which no responsive pleading is required.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

21. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

22. Any use by NBCUniversal of plaintiff's alleged work was a fair use under 17 U.S.C. § 107.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

23. The claims in the Complaint are barred in whole or in part under the doctrines of waiver, estoppel and/or unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

24. Plaintiff granted NBCUniversal an express or implied license, or otherwise consented to or permitted the complained-of use of the allegedly infringed work.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

25. The claims in the Complaint are barred in whole or in part under the doctrine of laches.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

26. The claims in the Complaint are barred in whole or in part under the applicable statute of limitation.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

27. Plaintiff has failed to meet the statutory requirements to maintain a copyright infringement action.

WHEREFORE, NBCUniversal prays that this Court enter judgment dismissing the Complaint in its entirety, awarding NBCUniversal its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505 and/or any other applicable provisions, and granting such other and further relief as the Court may deem just and proper.

NBCUniversal Media, LLC,

By its attorney,



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Dated: April 22, 2016

Certificate of Service

I certify that a copy of this Answer was served on plaintiff's counsel via ECF, and that copies of the DVDs designated as Exhibits 1 and 2 to this Answer were sent by overnight delivery to the address below.

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Erik Bierbauer

